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AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

AUG 28 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

)	2 CA-JV 2009-0060
)	DEPARTMENT A
)	
IN RE SAMANTHA L.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. JV08000048

Honorable Ann R. Littrell, Judge

AFFIRMED IN PART; VACATED IN PART

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E S P I N O S A, Presiding Judge.

¶1 In this appeal, Samantha L. challenges the juvenile court's order requiring her to pay restitution to the victim of theft and criminal trespass charges alleged in the delinquency petition filed on October 30, 2008 (Petition C). She argues that, based on this court's decision in *In re Michelle G.*, 217 Ariz. 340, 173 P.3d 1041 (App. 2008), the state's

request for restitution on Petition C was untimely. “We review a juvenile court’s delinquency restitution order for an abuse of discretion.” *In re Richard B.*, 216 Ariz. 127, ¶ 12, 163 P.2d 1077, 1080 (App. 2007). However, in exercising that discretion, the court “may not misapply the law or a legal principle.” *Id.* For the reasons stated below, we vacate the restitution order.

¶2 On December 16, 2008, pursuant to a plea agreement Samantha admitted having committed theft and criminal trespass, two of six counts alleged in Petition C. She also entered into a plea agreement in connection with another delinquency petition filed on November 6, 2008, admitting she had committed theft and criminal trespass on that petition as well. The plea agreement relating to both petitions reflected that restitution was to be assessed against Samantha but that neither an amount had been determined nor had a restitution cap been established. During the pre-adjudicatory conference at which Samantha entered her admissions on both petitions, the court asked whether there were any victims of the offenses. The state responded that there were and that they had been notified, stating a restitution claim of \$380 had been made in connection with the other petition but there did not appear to be any such request on Petition C or the petition to revoke probation the state had also filed. The court noted that, with respect to Petition C, a door appeared to have been damaged and compact discs were missing. The prosecutor agreed there “potentially could be” a restitution claim on Petition C and at the court’s suggestion, set a restitution cap of “around 900 or \$1,000” on both petitions.

¶3 At the February 24, 2009 disposition hearing, the court asked the probation officer whether there were restitution claims. The probation officer responded that she was

not certain; she believed a computer was one of the items taken in the offenses charged in the other petition, but she understood it had been returned, along with other “items.” Although she stated she was not “a hundred percent [sure] o[f] that,” the prosecutor confirmed that the restitution claim she had was for the victim in that petition related to a computer that had been returned; therefore, there was no claim. There was no further discussion about restitution. The juvenile court then placed sixteen-year-old Samantha on intensive probation until the age of eighteen and advised her of her right to appeal within fifteen days. Samantha signed a form acknowledging her right to appeal. In the formal order of intensive probation, entered together with the disposition minute entry, the box next to restitution was not checked.

¶4 Almost one month later, on March 19, 2009, the state filed a motion for restitution on both petitions. The state explained that the victims had submitted Victim Statements of Loss to the probation department and attached them to the motion. The statements were dated November 3, 2008, and September 24, 2008. The state conceded that “the Juvenile has a right to have a final appealable order” but asserted that victims must be awarded restitution and made whole. Samantha objected in a written response and at the subsequently held restitution hearing. She argued that the time for appeal had passed before the state filed the motion for restitution and, based on this court’s decision in *Michelle G.*, the juvenile court lacked jurisdiction to reopen the disposition on the petitions and award restitution.

¶5 At the May 5 restitution hearing, the juvenile court agreed “this . . . case [is] very, very much like [I]n re: Michelle G.” but found it distinguishable on two grounds.

First, the prosecutor in this case “raised the issue within less than a month, as opposed to the 14 months or more that it took” in *Michelle G.* See 217 Ariz. 340, ¶¶ 5-6, 173 P.3d at 1043. Second, Samantha absconded on the day of the disposition. The court reasoned Samantha would not be prejudiced by reopening the matter and in fact would benefit because the court would give her an additional fifteen days from the entry of the final judgment to appeal. The court proceeded with the restitution hearing, at which the victims testified. Because the state still had not provided the court with sufficient information, the court took the matter under advisement pending its receipt of additional information. At an additional hearing on June 1, the court ordered Samantha to pay the victim of the offenses in Petition C restitution in the amount of \$1,890.03. This appeal followed.

¶6 Samantha contends, as she did below, that this court’s decision in *Michelle G.* is not meaningfully distinguishable from her case, and based on that decision, we must vacate the restitution award. We agree. Both here and in *Michelle G.*, the plea agreements anticipated the juveniles would be ordered to pay restitution, but the state did not present the victims’ claims before or at the disposition hearing. See *id.* ¶ 3. Here, the victims had presented claims to the probation officer well before the disposition hearing; in *Michelle G.*, the prosecutor had also received the claims in advance. See *id.*

¶7 As we stated in *Michelle G.*, relying on our supreme court’s decision in *In re Alton D.*, 196 Ariz. 195, ¶ 19, 994 P.2d 402, 406-07 (2000), “[a] juvenile court may hold restitution open beyond the disposition hearing by setting a later, reasonable deadline by which restitution claims may be made or are thereafter barred.” *Michelle G.*, 217 Ariz. 340, ¶ 11, 173 P.3d at 1044. But, we added, “[i]ssuance of a separate restitution order after the

rest of the disposition is an exception permitted only by court-ordered extension.” *Id.*, quoting *In re Kevin A.*, 201 Ariz. 161, ¶ 7, 32 P.3d 1088, 1090 (App. 2001) (alteration in *Michelle G.*). We reasoned in *Michelle G.* that, “[b]ecause the juvenile court did not set a deadline allowing later claims for restitution, the issue of restitution was not held open beyond the disposition, and the disposition order thus became final and appealable when it was signed by the judge and filed by the clerk of the court” 217 Ariz. 340, ¶ 14, 173 P.3d at 1045. Here, the disposition order became final when Samantha did not file a notice of appeal on or before March 12, 2009, fifteen days after the signed disposition order was filed with the clerk of the court.¹ At no time during the disposition hearing or in its order did the juvenile court hold open the issue of restitution.

¶8 We recognize the delay in *Michelle G.* was more egregious than it was here. We also recognize that the juvenile court is required to order a juvenile to pay restitution to any victim, *see* Ariz. Const. art. II, § 2.1(A)(8); A.R.S. § 8-344(A), and restitution was untimely requested here, not by the victim, but because of failings by the probation department and the prosecutor. But because the court did not hold the issue of restitution open for any period, this matter became final, and the court did not have the authority to reopen that final disposition order and require Samantha to pay restitution. *See Alton D.*, 196 Ariz. 195, ¶¶ 13-14, 994 P.2d at 405; *Kevin A.*, 201 Ariz. 161, ¶ 2, 32 P.3d at 1089. We are aware of no authority that supports the juvenile court’s distinction of Samantha’s case on the

¹The date in the clerk’s seal is 2007. Clearly, this was a clerical error; the minute entry order was dated February 24, 2009, but was signed by the judge on February 25, the same day it was apparently filed with the clerk.

ground she had absconded; that did not affect the finality of her case. Similarly, we fail to see how the filing of additional delinquency petitions and petitions to revoke probation and the juvenile's commitment for residential treatment for a period of time in *Michelle G.*, see 217 Ariz. 340, ¶ 4, 173 P.3d at 1043, meaningfully distinguishes that case from this one, as the state suggests.

¶9 Finally, we disagree with the state that this case “is more like” *Richard B.* than *Michelle G.* In *Richard B.*, unlike here, the juvenile court had set a deadline for the victim's submission of a restitution claim. The state did not file its motion until eleven days after the deadline, but the victim had submitted information she had believed would be sufficient within the deadline. 216 Ariz. 127, ¶¶ 4-5, 163 P.3d at 1079. The juvenile court proceeded with the restitution hearing over the juvenile's objection because the court typically extended the time for submitting restitution claims for thirty days and had only given the victim seven days because the juvenile's eighteenth birthday was approaching and the court would lose jurisdiction. *Id.* ¶ 19. Division One of this court concluded the juvenile had not been prejudiced by an undue or unreasonable delay in the final disposition. *Id.* ¶ 20.

¶10 The court in *Richard B.* also rejected the juvenile's argument that the juvenile court had lacked jurisdiction to award restitution. *Id.* ¶¶ 13-18. It distinguished *Alton D.* and *Kevin A.*, stating, “the juvenile court did not indicate that restitution would be closed if the victim did not comply with the deadline nor did it notify the victim that she needed to file a verified victim statement.” *Id.* ¶ 17. Thus, the matter did not automatically become final when the deadline passed. But here, again, the disposition order was final because the matter of restitution was never held open and the time for appealing that order had passed. There

was no court-ordered, extended deadline for restitution claims for the court to further extend in the exercise of its discretion. Consequently, this case is not like *Richard B.*; rather, it is more like *Michelle G.*, except with respect to the degree of the delay.

¶11 We note, as did the special concurrence in *Michelle G.*, it is “unfortunate . . . circumstances” that have “produce[d] a result such as this—where an innocent and diligent victim somehow gets lost in the shuffle.” *Michelle G.*, 217 Ariz. 340, ¶ 17, 173 P.3d at 1045 (Pelander, C.J., specially concurring). But the “law compels [us]” to conclude that the juvenile court abused its discretion in reopening this final matter and ordering Samantha to pay restitution. *Id.* Accordingly, we vacate that portion of the juvenile court’s June 1, 2009 order requiring Samantha to pay restitution. In all other respects, the court’s disposition order is affirmed.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOHN PELANDER, Judge

JOSEPH W. HOWARD, Chief Judge